

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LOIS ANN SCOTT,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

CASE NO. C12-5655 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 23), and Defendant’s objections to the R&R (Dkt. 25).

On August 15, 2013, Judge Creatura issued the R&R recommending that the Court reverse the decision of the Administrative Law Judge (“ALJ”) and remand the matter for further consideration. Dkt. 23. Judge Creatura concluded that (1) the ALJ failed to adequately consider the opinion of Dr. Darren Schwartz and (2) the error was not harmless. *Id.* On August 27, 2013, the Government filed objections. Dkt. 25. On September 4, 2013, Plaintiff Lois Ann Scott (“Scott”) responded. Dkt. 26.

1 The district judge must determine de novo any part of the magistrate judge's
2 disposition that has been properly objected to. The district judge may accept, reject, or
3 modify the recommended disposition; receive further evidence; or return the matter to the
4 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

5 In this case, the Government objects to Judge Creatura's conclusion that the error
6 was harmless. Dkt. 25 at 2. The Court disagrees. Scott's Crohn's flares could cause
7 Scott to miss work such that her vocation profile was not employable. In light of this
8 evidence, the Court is unable to conclude that the ALJ's error was "'inconsequential to
9 the ultimate nondisability determination.'" *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th
10 Cir. 2012) (quoting *Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th
11 Cir. 2008)).

12 Therefore, the Court having considered the R&R, the Government's objections,
13 and the remaining record, does hereby find and order as follows:

- 14 (1) The R&R is **ADOPTED**;
- 15 (2) The ALJ's decision is **REVERSED**; and
- 16 (3) The matter shall be **REMANDED** to the ALJ for further consideration.

17 Dated this 25th day of October, 2013.

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20 BENJAMIN H. SETTLE
21 United States District Judge
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